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JUL 22 1992

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

ORIGINAL
FILE

In the Matter of :
: Policies and Rules for :
: Licensing Fallow 800 MHz :
: Specialized Mobile Radio :
: Spectrum Through a :
: Competitive Bidding Process :

RM-7985

To: The Commission

MOTION OF BELL SOUTH CORPORATION
TO ACCEPT LATE FILED COMMENTS

BellSouth Corporation and BellSouth Enterprises, Inc. ("BellSouth") herewith move the Commission to accept the attached late filed comments in opposition to the Petition for Rulemaking of Fleet Call, Inc. For good cause therefor, BellSouth shows that the transmittal of comments from its offices in Atlanta, Georgia, was not knowingly received at its offices in Washington, D.C. on July 17, 1992, was not filed that day, and the omission was not uncovered until the failure of return of a stamped filed copy was revealed. Copies of the comments were timely served on counsel for Petitioner and American Mobile Telecommunications


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Association, Inc. by U. S. mail from Atlanta. Hence, grant of this motion and acceptance of these late filed comments will neither delay this proceeding nor prejudice any party.

Respectfully submitted,

BELLSOUTH CORPORATION
BELLSOUTH ENTERPRISES, INC.

By: 
William B. Barfield
Charles P. Featherstun

Suite 1800
1155 Peachtree St., N.E.
Atlanta, GA 30367-6000
(404) 249-2641

Date: July 22, 1992

CERTIFICATE OF SERVICE

I, Evelyn T. Craig, hereby certify that I have on this 22nd day of July, 1992, sent via United States first class mail, a copy of the foregoing Motion of BellSouth Corporation to Accept Late Filed Comments to the following:

Robert S. Fossaner
Lawrence R. Krevor
1450 G Street, N.W.
Washington, D.C. 20036

Alan R. Shark, President
American Mobile Telecommunications Assn., Inc.
1835 K Street, N.W., Suite 203
Washington, D.C. 20006


Evelyn T. Craig

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In the Matter of :
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To: The Commission

RESPONSE OF BELL SOUTH CORPORATION TO
PETITION FOR RULEMAKING OF FLEET CALL, INC.

BellSouth Corporation and BellSouth Enterprises, Inc. ("BellSouth") hereby respond to a petition for rulemaking filed by Fleet Call, Inc. ("Fleet Call") for modification of the Commission's Specialized Mobile Radio ("SMR") rules, whereby certain unassigned radio spectrum presently allocated to SMRs would be auctioned to the highest bidder for SMR use. Fleet Call requests, as it must, that the Commission seek underlying authority for the rule from Congress.

BellSouth is opposed to the Commission's seeking Congressional authorization on the basis Fleet Call has proposed. However, should the Commission be disposed to issue a NPRM, the Notice should be expanded to include a proposed rule permitting wireline participation in the competitive bidding process.

- I. THE FLEET CALL PETITION, WHILE APPEARING INVITINGLY INNOVATIVE, NEVERTHELESS FALLS SHORT OF JUSTIFYING RULEMAKING. HOWEVER, SHOULD THE COMMISSION BE DISPOSED TO ISSUE A NOTICE OF PROPOSED RULEMAKING, IT SHOULD EXPAND SUCH NOTICE TO INCLUDE A PROPOSED RULE PERMITTING WIRELINE OR WIRELINE AFFILIATE PARTICIPATION IN THE COMPETITIVE BIDDING SCHEME ADVANCED BY FLEET CALL.

Fleet Call asks the Commission to seek Congressional approval to set aside a block of unassigned channels in certain metropolitan locations and rural areas¹ for the "exclusive use" of SMR systems.² These channels, according to the proposal, would be available in 105, 84, 63, and 42 channel groups and subject to competitive bidding, either nationally or regionally³. Winning bidders would be subject to a financial check, and would be required to construct and place in operation base stations within certain periods of time.⁴ Constructed systems must be interoperable with adjacent systems, provide roaming capability, and utilize digital technology rendering them "at least six times more efficient than existing trunked analog SMR systems."⁵

¹These areas would coincide with "MSAs" and "RSAs," as those terms are used for cellular service. Fleet Call Petition for Rulemaking ("Petition"), p. 7.

²Petition, p. 6.

³Bids would be submitted either on a group-by-group basis or on an overall basis. If an aggregate bid were higher than the aggregate of individual bids, the aggregate bidder would win the auction.

⁴Petition, p. 30.

⁵Petition, p. 30.

While the Fleet Call proposal may appear, at first blush, to be an inviting innovation in spectrum assignment policy, its hypotheses and scope are too constricted, and its assumptions unsupported.

As a general proposition, auctions hold the potential to be an optimally efficient way to assign new spectrum, while at the same time, benefitting the United States Treasury; the issue of spectrum auctions is thus ripe for discussion and dialogue. However, auctioning schemes must not arbitrarily exclude otherwise qualified parties and must, at a minimum, convey substantially greater rights than that now granted by comparative hearing or lottery. The conveyance of increased "property rights" would result in a more vigorous marketplace for spectrum, impelling a higher and better, more efficient, use for frequencies. Such efficiency implies that a transferee of spectrum must have the right to sell, lease or subdivide the spectrum transferred to Commission defined eligibles, and must possess the prerogative to provide a range of services on such spectrum. While the government would not necessarily cede its spectrum management and licensing responsibilities, the transference of these greater rights in an auction scheme would imbue a "truer value" on spectrum than if allocated by government fiat.

None of these issues were raised or discussed by the Fleet Call proposal.

Additionally, Fleet Call's specific auction scheme is based upon the assumption that all of the unused channels now allocated to SMR development will indeed be used, and used efficiently, if they were subject to the auctioning process for the single restricted purpose which Fleet Call has proposed.⁶ There are no studies or other data to show that Fleet Call's proposal, i.e., auctioned digital SMR service, would make efficient use of these great numbers of "fallow" radio channels; that substantial accretions to the public coffers would result therefrom; or, indeed, that any bidding would be truly competitive.

On the other hand, Fleet Call is more nearly correct in asserting that:

"Advances in technology, particularly digital multiplexing techniques, increasing demand for ubiquitous nationwide mobile communications capabilities, and competition are the major factors driving development of a wide range of new wireless communications services. Existing wireless communications providers are looking for new markets and evaluating new technologies and services; new entrants are also being created to provide even more competition and innovative new service offerings. Paging systems, cellular telephone systems, SMRs, mobile satellite systems, vehicle tracking systems and data networks are all evolving to offer nationwide communications capabilities [Footnote omitted]." Petition, p. 9.

It stands to reason, therefore, that the efficiency of any auction bidding process would benefit from as many

⁶Petition, pp. 17-19.

formidable participants as possible; and it is likewise intuitively incorrect to assume, and anomalous as well, that wirelines telephone common companies or their affiliates should be the only group of entrepreneurs excluded from participation in the Fleet Call's proposal, or in the SMR business in general.⁷ The Commission itself created SMRs:

"as an open entry, competitive service, believing that this approach would stimulate the development and production of spectrally efficient trunking technology, provide the flexibility necessary to meet existing and new user needs, and enhance the development of new techniques and services."⁸

How better to achieve these policy goals than to permit entry by all viable players? Fleet Call's filing neither suggests the efficacy of free entry nor does it propose it. However, it does assert that "[t]he public interest will be served by stimulating investment in the widespread implementation of digital SMR infrastructure."⁹ And it goes on to recognize that "[c]onstructing digital SMR systems is much more expensive than analog stations and requires

⁷"Wireline telephone common carriers" are presently forbidden from participating in the SMR business. 47 C.F.R. Section 90.603(c).

⁸Fleet Call, Inc., 6 FCC Rcd 1533 (1991). This is also consistent with 47 U.S.C., Section 157: "It shall be the policy of the United States to encourage the provision of new technologies and services to the public;" See also, as to SMRs specifically, 47 U.S.C., Section 332.

⁹Petition, p. 18.

greater capital commitments."¹⁰ It follows, therefore, that full participation by all viable entries in an auction process would more likely stimulate those additional sources of capital Fleet Call itself recognizes is needed to make efficient use of fallow SMR radio channels.

¹⁰Id. at p. 18.

II. CONCLUSION

BellSouth opposes the Fleet Call Petition for Rulemaking as it is now constituted. The petition is deficient in that it fails to support its underlying assumptions. There is no showing that fallow SMR channels would enjoy greater usage under the auction scheme, or that substantially increased revenues would flow to the United States Treasury. The Fleet Call proposition is likewise deficient because it fails to recommend full participation by all viable entities in the auction process it proposes. Such participation is necessary to enliven and perpetuate already existing competition, stimulate additional sources of capital, provide a greater technological base for innovation, and increase the likelihood of enhanced revenues to the government. Without these essential ingredients, or the conveyance of increased property rights, the proposed rulemaking should not go forward.

Respectfully submitted,

BELLSOUTH CORPORATION
BELLSOUTH ENTERPRISES, INC.

By:


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Date: July 17, 1992

CERTIFICATE OF SERVICE

I, Evelyn T. Craig, hereby certify that I have on this 17th day of July, 1992, sent via United States first class mail, a copy of the foregoing Response of BellSouth Corporation to the following:

Robert S. Foosaner
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1450 G Street, N.W.
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